

LIEW AH KIM

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v.

MINISTER FOR HOME AFFAIRS, MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING SUMMONS NO. R1-24-83 OF 1991]
10 MARCH 1992

b

ADMINISTRATIVE LAW: *Further issue - Whether notification should be personally signed by Minister - Affidavit of the Minister said that his decision was reasonable, and was made after considering all available information, in his possession, the public safety and public interests - Delegation of Power Ordinance 1956 - Does s. 6(2) of the ss. 6, 12, 13B of the Printing Presses and Publications Act 1984 apply.*

c

ADMINISTRATIVE LAW: *Plaintiff is the permit holder for the Democratic Action Party - Further condition imposed on the permit - Condition stated that "The Rocket" could only be distributed to D.A.P. members and not for sale or distribution to members of the public - Whether is null and void - Whether new condition - Which was a restriction imposed by the Minister - Lawfully imposed - Plaintiff not given opportunity to be heard before new condition imposed.*

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Since 1966, the Democratic Action Party Malaysia (the DAP) had been given permits to publish its newspaper called "The Rocket". The plaintiff is the permit holder for the D.A.P. the last permit issued under s. 6(1)(a) of the Printing Presses Publications Act 1984, (the Act) was for period 1 December 1990 to 30 November 1991. This permit allowed for printing of a society newspaper.

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The matter raised as issue is the further condition imposed by the Minister of Home Affairs, and the said condition stated that "The Rocket" could only be distributed to D.A.P. members, and not for sale or distribution to members of the public.

The plaintiff filed application for declaration that the condition imposed by the Minister is null and void.

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The main ground of the plaintiff's application is that he had not been given the opportunity to be heard before the new condition, which was a restriction on the distribution of the Rocket, was imposed by the Minister. It was also further argued by the plaintiff's learned Counsel that the notification of the new condition vide letter dated 15 May 1991 should be signed by the Minister personally.

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Held:

[1] The Minister has absolute discretion to grant or not to grant a permit under s. 6 of the Act. It is clear that even when a permit or licence is to be revoked or suspended, the holder of such permit or licence is expressly excluded by the Act from being given an opportunity to be heard.

h

[2] Surely, when the Minister intends to impose a further condition in the permit, (which is a minor matter when compared to revocation or suspension of a licence or permit) he is not bound to ask the permit holder why he should not do so.

[3] Further, the permit holder (plaintiff) is fully aware that under condition 12 in the permit, the Minister can at any time amend the conditions in the permit by notifying in writing the plaintiff of the amendment.

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a [4] The learned Judge took the view that the provision of s. 6(2) of the Delegation of Powers Ordinance 1956 does not apply here because the Minister has affirmed in his affidavit dated 18 December 1991 that he had expressly authorised Encik Mokhtar to specially notify the plaintiff of the Minister's decision.

b [5] The Court is satisfied that the Minister had acted honestly and fairly in that he did not single out "The Rocket" alone, but all political party newspapers from being circulated or sold to the members of the public.

[Plaintiff's application dismissed with costs.]

Case referred to:

Karpal Singh & 2 Ors. v. Penguasa Tempat Tahanan, Taiping [1989] 1 CLJ (Rep) 663 (cit)

c **Legislation referred to:**

Delegation of Powers Ordinance 1956, s. 6
Printing Presses and Publications Act 1984, ss. 6, 12, 13B

For the plaintiff - Karpal Singh; M/s. Karpal Singh & Co.

For the defendant - Suriyadi b. Halim Omar

JUDGMENT

d **Eusoff Chin J:**

e Since 1966, the Democratic Action Party, Malaysia (the DAP) had been given permits to publish its newspaper called 'The Rocket'. The plaintiff is the permit holder for the DAP. The last permit issued under s. 6(1)(a) of the Printing Presses Publications Act, 1984, (the Act) for the publication of 'The Rocket' was for period 1 December 1990 to 30 November 1991. This permit allowed the printing of a society newspaper.

f By letter dated 15 May 1991 the Ketua Penolong Setiausaha of the Ministry of Home Affairs, Encik Mokhtar bin Hj Ahmad informed the plaintiff that the Minister of Home Affairs had imposed a further condition on the permit, and that condition stated that 'The Rocket' could be only distributed to DAP members, and not for sale or distribution to members of the public.

g On 1 November 1991 the plaintiff filed this application for declaration that the condition imposed by the Minister on 15 May 1991 is null and void. When I heard this application on 31 December 1991 the permit had expired (on 30 November 1991). Notwithstanding that the decision may be purely academic, I decided to hear the application - *Karpal Singh & 2 Ors. v. Penguasa Tempat Tahanan Taiping [1989] 1 CLJ (Rep) 663*.

h It is not disputed that the plaintiff had in the application form, applied for permit to publish a 'public newspaper', but that the Minister had approved for the period 1 December 1990 to 30 November 1991, *vide* permit No. PP 140/12/90 a 'society newspaper' (Akhbar Pertubuhan) called The Rocket. The Minister has absolute discretion to grant or not to grant a permit under s. 6 of the Act which states:

6. Grant of Permit

(1) The Minister may in his absolute discretion grant:

- (a) to any person a permit to print and publish a newspaper in Malaysia; or
- (b) to any proprietor of any newspaper in Singapore a permit allowing such newspaper to be imported, sold, circulated or distributed in Malaysia.

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- (2) The Minister may at any time revoke or suspend a permit for any period he considers desirable.

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Further s. 12 of the Act states:

12 Validity of licence and permit

- (1) A licence or permit granted under this Act shall be subject to such conditions as may be endorsed therein and shall, unless sooner revoked or suspended, be valid for a period of twelve months from the date of the granting or issue of such licence or permit or for such shorter period as may be specified in the licence or permit.
- (2) The Minister shall have the **absolute discretion** to refuse an application for a licence or permit.

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The main ground of the plaintiff's application is that he had not been given the opportunity to be heard before the new condition, which was a restriction on the distribution of the Rocket, was imposed by the Minister.

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I note that condition 12 in the permit stated:

12. The conditions of this permit can be amended **at any time** by notification in writing by the Minister of Home Affairs to the permit holder.

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There is s. 13B of the Act which states:

13B. Exclusion of right to be heard.

No person shall be given an opportunity to be heard with regard to his application for a licence or permit or relating to the revocation or suspension of the licence or permit granted to him under this Act.

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It is clear that even when a permit or licence is to be revoked or suspended, the holder of such permit or licence is expressly excluded by the Act from being given an opportunity to be heard. Surely, when the Minister intends to impose a further condition in the permit, (which is a minor matter when compared to revocation or suspension of a licence or permit) he is not bound to ask the permit holder why he should not do so. Further, the permit holder (plaintiff) is fully aware that under condition 12 in the permit, the Minister can at any time amend the condition in the permit by notifying in writing the plaintiff of the amendment.

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It is further argued by the plaintiff's learned Counsel that the notification of the new condition *vide* letter dated 15 May 1991 should be signed by the Minister personally. I do not think that is necessary.

The Minister of Home Affairs Dato' Seri Dr. Mahathir bin Mohamad in his affidavit sworn on 18 December 1991 at paras. 12 and 13 stated that he had decided on 27 April 1991 that all political party newspapers including "The Rocket" should not be circulated to the public. Consequent to that decision the Minister had called Encik Mokhtar bin Hj Ahmad, Ketua Penolong Setiausaha, of his Ministry and directed Encik Mokhtar to notify all political newspaper permit holders of his decision. At para. 14 of his affidavit the Minister said that his decision was reasonable, and was made after considering all available informations, in his possession, the public safety and public interests of this country.

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Encik Mokhtar bin Hj Ahmad, in his affidavit confirmed what was stated by the Minister in his affidavit.

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a Section 6 of the Delegation of Powers Ordinance 1956 states:

6. Exercise of powers by subordinates of Ministers or Chief Ministers.

- b* (1) Subject to the provisions of s. 11 of this ordinance and of any provision of any written law expressly to the contrary, all acts, orders or directions which could lawfully be done or given, in the exercise of any power or in the performance of any duty conferred imposed by any written law, by a Minister or the Chief Minister of a State **may**, subject to any directions given by him **be validly and effectually** done or given on his behalf and in his name by any officer under his administrative control and **expressly or impliedly** authorised by him **generally or specially thereto** or in the case of a Minister be done or given on his behalf and in his name by an Assistant Minister.
- c* (2) A certificate in writing purporting to be under the hand of a Minister or Chief Minister personally that any person was at the material date an officer under his administrative control or that any such officer was expressly or impliedly authorised by him to do to give a certain act, order or direction shall be conclusive evidence of the facts stated in such certificate.

d I am of the view that the provision of s. 6(2) of the Delegation of Powers Ordinance 1956 does not apply here because the Minister has affirmed in his affidavit dated 18 December 1991 that he had expressly authorised Encik Mokhtar to specially notify the plaintiff of the Minister's decision.

e In this case I am satisfied that the Minister had acted honestly and fairly in that he did not single out 'The Rocket' alone, but all political party newspapers from being circulated or sold to the members of the public. In any event, evidence shows that despite the restriction, 'The Rocket' was still distributed or sold to the public until the end of November 1991, when the permit expired.

I therefore dismissed the plaintiff's application with costs.

Also found at [1992] 2 CLJ 1029

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